

# TRANSCRIPT OF RECORD

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## Supreme Court of the United States

OCTOBER TERM, 1944

No. 220

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED, PETITIONER,

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER,

COMMISSIONER OF INTERNAL REVENUE

No. 222

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER,

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR CERTIORARI FILED JULY 3, 1944

CERTIORARI GRANTED OCTOBER 9, 1944

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 220

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED, PETITIONER,

v. S.

COMMISSIONER OF INTERNAL REVENUE

No. 221

BRITISH ASSETS TRUST, LIMITED, PETITIONER,

v. S.

COMMISSIONER OF INTERNAL REVENUE

No. 222

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER,

v. S.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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## THE SCOTTISH AMERICAN INVESTMENT COMPANY, LTD.

26 Journal Square, Jersey City, New Jersey

## CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR 1938

## GAINS FROM SALES AND EXCHANGES OF SECURITIES

	Description	Year acquired	Amount realized	Cost	Gain
500 shs.	Allied Chemical & Dye Corp.	1931	\$91,700 00	\$56,545 00	\$35,155 00
500 shs.	American Telephone & Tel. Co.	1932	73,000 00	55,312 50	17,687 50
5 shs.	California Packing Corp.	1938	254 38	241 25	13 13
500 shs.	Consolidated Gas, Electric Light & Power Co. of Baltimore	1933	34,100 00	27,625 00	6,475 00
2,000 rts.	Continental Oil Co. of Delaware	1938	531 25	531 25	
1,000 shs.	General Electric Co.	1938	47,125 00	37,800 00	9,325 00
500 shs.	General Motors Corp.	1934	25,750 00	15,250 00	10,500 00
200 shs.	General Telephone Corp.	1935	10,200 00	8,950 00	1,250 00
350 shs.	Great Western Sugar Co.	1929	46,577 50	39,992 50	6,585 00
3,200 shs.	Hiram-Walker Gooderham & Worts, Ltd.	1935	61,525 00	57,700 00	3,825 00
480 shs.	Otis Steel Co.	1936	27,400 00	27,298 99	101 01
4,200 shs.	Owens Illinois Glass Co.	1937	244,725 00	146,781 38	97,943 62
250 shs.	Philip Morris and Co., Ltd.	1936	35,000 00	18,351 35	16,648 65
1,250 rts.	Philip Morris and Co., Ltd.	1938	1,671 88		1,671 88
2,500 rts.	Phillips Petroleum Co.	1938	937 50		937 50
600 shs.	Shell Union Oil Corp.	1931	8,625 00	3,000 00	5,625 00
1,000 shs.	Twin Coach Co.	1936	13,000 00	10,062 50	2,937 50
200 shs.	Wesson Oil & Snowdrift Co., Inc.	1935	16,200 00	15,239 00	970 00
			738,322 51	520,140 47	218,182 04

## LOSS FROM SALES AND EXCHANGES OF SECURITIES

	Description	Year acquired	Amount realized	Cost	Loss
\$28,000	Oriental Development Co., Ltd.	1935	\$21,187.50	\$29,830.00	\$8,642.50
\$75,000	Oriental Development Co., Ltd.	1937	43,943.75	69,381.87	25,438.12
\$16,000	Pennsylvania Railroad Co.	1937	12,995.00	18,229.88	5,234.88
\$100,000	Taiwan Electric Power Co., Ltd.	1931	56,592.50	94,218.75	41,626.25
700 shs.	American Bakeries Corp.	1928	20,950.00	32,650.00	11,700.00
240 shs.	American Bakeries Corp.	1929	4,250.00	13,250.00	9,000.00
800 shs.	Anchor Hocking Glass Corp.	1930	88,063.75	88,065.00	661.25
800 shs.	Columbia Gas and Electric Corp.	1930-1931	84,050.00	81,715.00	17,665.00
1,000 shs.	Curtis Publishing Co.	1934	39,998.52	72,000.00	32,001.48
1,400 shs.	Dominion Tar & Chemical Co., Ltd.	1937	6,875.00	8,287.16	1,412.16
500 shs.	Hathaway Bakeries, Inc.	1928-1929	6,200.00	62,600.00	56,400.00
350 shs.	Hathaway Bakeries, Inc.	1929	300.00	16,750.00	16,450.00
2,800 shs.	Hathaway Bakeries, Inc.	1928-1929	11,900.00	38,425.00	26,525.00
4,000 shs.	Interstate Bakeries Corp.	1938	61,505.00	89,532.98	28,027.98
2,500 shs.	Interstate Bakeries Corp.	1938	4,800.00	114,285.20	109,485.20
750 shs.	Kennecott Copper Corp.	1929	82,450.00	156,314.62	73,864.62
750 shs.	Langendorf United Bakeries, Inc.	1929	15,000.00	29,250.00	14,250.00
1,000 shs.	Langendorf United Bakeries, Inc.	1929	3,468.75	28,500.00	25,031.25
2,200 shs.	Pacific Coast Co.	1925	5,008.75	57,312.00	51,703.25
8,050 shs.	Tung Sol Lamp Works, Inc.	1935	6,687.50	27,303.01	20,615.51
570 shs.	Western Dairies, Inc.	1925-1929	12,075.00	180,412.98	168,337.98
750 shs.	Western Dairies, Inc.	1928-1929	9,975.00	44,206.86	34,231.86
1,000 shs.	Wheeling Steel Corp.	1937	18,475.00	32,064.67	13,589.67
100 shs.	Gas Utilities Co. (Liquidation)	1928	20,989.00	98,500.00	77,511.00
	New England Oil Refining Co. Gen. S. F. "A"				
	8% bonds due 1943	1923	13,517.60	95,000.00	81,482.40
Allowable loss as limited					
			627,797.62	1,548,644.92	950,887.30
Net loss					220,182.04
					732,705.26



THE SCOTTISH AMERICAN INVESTMENT COMPANY, LTD.  
26 Journal Square, Jersey City, New Jersey

## 1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

## GAINS FROM SALES AND EXCHANGES OF SECURITIES

Pair of bonds or number of shares	Name of security	Year acquired	Amount realized	Cost	Gain
1,500 shs.	Allied Chemical & Dye Corp.	1931, 33, 37	\$250,750.00	\$205,255.00	\$45,495.00
1,000 shs.	American Chicle Company	1934-1936	125,975.00	72,987.50	52,987.50
500 shs.	American Telephone & Telegraph Co.	1933	84,237.50	65,125.00	19,112.50
500 shs.	Bethlehem Steel Corp.	1935	59,775.00	44,972.97	14,802.03
748 shs.	Commercial Credit Company	1934-1936	35,519.50	11,751.02	23,768.48
1,000 shs.	Fisk Rubber Corp.	1934-1935	100,781.25	78,590.00	22,191.25
500 shs.	General Motors Corp.	1934	27,500.00	15,250.00	12,500.00
200 shs.	General Telephone Corp.	1935	10,300.00	8,950.00	1,350.00
2,000 shs.	Greyhound Corp.	1937 and 1938	23,625.00	48,172.00	5,453.00
1,500 shs.	Hackensack Water Co.	1934	46,837.50	38,488.00	8,349.50
1,000 shs.	Inland Steel Co.	1935	95,075.00	87,381.25	7,693.75
1,000 shs.	Liggett & Myers Tobacco Co.	1934-1936	103,100.00	102,675.00	425.00
150 shs.	Melville Shoe Corp.	1935 and 1936	16,950.00	14,599.45	2,350.55
2,000 shs.	Mesta Machine Company	1934-1935	70,962.50	52,750.00	18,212.50
700 shs.	Norfolk & Western Railway Co.	1928	143,700.00	131,700.00	12,000.00
3,000 shs.	North American Company	1939	168,198.54	156,375.00	11,823.54
1,000 shs.	North American Edison Co.	1933, 35, 36	105,000.00	79,423.25	25,576.75
500 shs.	Philip Morris & Co. Ltd.	1936	41,500.00	36,702.70	4,797.30
66 50/75 shs.	Rustless Iron & Steel Corp.	1937	3,012.75	2,566.67	446.08
500 shs.	Sears, Roebuck and Co.	1936	40,500.00	36,800.00	3,700.00
4,100 shs.	Southern California Edison Co., Ltd.	1935	113,000.00	80,812.50	32,187.50
166 shs.	Texas Corporation	1937	7,835.25	6,640.00	1,195.25

Schedule "F"

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LTD.  
26 Journal Square, Jersey City, New Jersey  
1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

GAINS FROM SALES AND EXCHANGES OF SECURITIES				
Par of bonds or number of shares	Name of security	Year acquired	Amount realized	Cost
1,000 shs.	United Shoe Machinery Corp.	1927	84,856.25	45,146.06
600 shs.	Westinghouse Electric Manufacturing Co.	1933	70,150.00	39,217.50
500 shs.	William Wrigley, Jr., Co.	1934	40,000.00	32,937.50
				Gain
				39,710.19
				30,932.50
				7,062.50
				404,172.67

LOSSES FROM SALES AND EXCHANGES OF SECURITIES

				Loss
800,000	Compania Azucarera Viena	1936	22,250 00	\$29,538.48
835,000	O'Gara Coal Company	1912	2,887.50	27,300.00
850,000	United Railways Co. of St. Louis	1926	12,250 00	41,750 00
836,000	Victor Fuel Company (Denver, Col.)	1910	14,985 00	31,684.34
2,500 shs.	American Can Company	1920-1932	226,287.50	289,950 00
400 shs.	American Pneumatic Service Co.	1912	5,000 00	20,146.81
500 shs.	American Rolling Mill Company	1937	39,375 00	50,550 00
[Vol. 70]				11,175 00
100 shs.	American Sugar Refining Co.	1928	88,600 00	\$10,785 00
500 shs.	American Woollen Company	1934	31,300 00	39,825 00
500 shs.	California Packing Corp.	1928	9,875 00	36,887.50
1,920 shs.	Chesapeake Corp.	1933 and 1938	58,291.50	58,650.40
1,200 shs.	Columbia Gas & Electric Corp.	1928 and 1930	96,000 00	127,525 00
6,000 shs.	Compania Azucarera Viena	1924	2,593.75	18,461.52
				13,806.77



500 shs.	General Cable Corp.	1928	15,237.50	36,587.50	21,350.00
500 shs.	Gillette Safety Razor Co.	1932	22,500.00	32,462.50	9,962.50
2,000 shs.	Glen Alden Coal Co.	1934	15,875.00	46,062.50	30,187.50
500 shares	Montgomery Ward & Company	1936	28,050.00	28,832.00	782.00
1,000 shares	Mt. Vernon Woodberry Mills, Inc.	1927	50,003.13	98,029.45	48,026.32
1,300 shares	The National Supply Co. (Pa.)	1937	21,450.00	31,571.75	10,124.75
400 shares	Otis Steel Company	1936	19,612.50	22,749.20	3,136.70
2,000 shares	Penitron Corp.	1939	4,750.00	50,000.00	25,250.00
1,500 shares	Pullman Inc.	1927-1929	57,712.50	122,035.00	64,322.50
500 shares	Pulse Oil Company	1927	5,250.00	16,028.12	10,778.12
500 shares	Remington-Rand Inc.	1935-1936	28,312.50	31,895.27	3,582.77
556 shares	St. Louis Public Service Co.	1905	1,375.00	45,925.00	44,550.00
1,000 shares	South Penn Oil Company	1928	37,237.50	44,087.50	6,850.00
1,200 shares	Standard Frack Fund Inc.	1929	19,224.00	50,400.00	31,176.00
4,000 shares	Standard Brands Inc.	1928-1929	24,025.00	138,050.00	114,025.00
900 shares	Texas Gulf Sulphur Co.	1929	33,650.00	50,457.50	17,807.50
1,100 shares	United Fruit Company	1930	19,850.00	108,486.96	16,636.96
256 shares	U. S. Smelting, Refining & Mining Co.	1934	13,281.25	32,503.25	19,222.00
2,000 shares	United States Steel Corp.	1936 and 1937	91,137.50	153,997.50	62,860.00
2,500 shares	Verinetes-Camaguey Sugar Co.	1937	4,212.50	48,500.00	44,287.50
400 shares	Victor Monaghan Co.	1923	19,800.00	45,514.00	25,714.00
500 shares	Western Dairies Inc.	1928 and 1929	8,225.00	38,777.97	30,552.97
500 shares	Westinghouse Air-Brake Co.	1935	18,012.50	21,700.00	3,687.50
1,000 shares	Wilson and Co. Inc.	1935 and 1937	50,800.00	61,525.50	10,725.50

929,457.49  
406,472.67

523,284.82

Allowable Loss as limited

Net Loss

## Schedule "F"

BRITISH ASSETS TRUST, LTD.

26 Journal Square, Jersey City, N. J.

## CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR CALENDAR YEAR 1938

## GAIN ON SALE OR EXCHANGE OF SECURITIES

Description	Date acquired	Amount realized	Cost	Gain
Mead Corp. 1st Mfg. A 6s	1932	\$1,020 00	\$451 21	\$568 79
Air Reduction Co.	1931	25,200 00	16,375 00	8,825 00
Amer. Telephone & Telegraph	1933	74,000 00	62,700 00	11,300 00
Amer. Tobacco Co.	1932	41,500 00	36,031 25	5,468 75
Bon Ami Co. "A"	1937	800 00	888 75	1 25
Liggett & Myers Tobacco Co. "B"	1930	50,425 00	50,891 50	33 50
Peninsular Telephone Co. Pfd.	1925 30	31,430 00	29,017 20	2,412 80
Southern California Edison Pfd.	1924	54,000 00	48,654 32	5,345 68
Combustion Engineering Co., Inc.	1934	2,156 12		2,156 12
Continental Oil Co. "	1938	531 25		531 25
Phillips Petroleum Co.	1938	398 50		368 50
Gain (Item 11 (a) of return)		284,270 87	244,509 43	39,761 44

## LOSS ON SALE OR EXCHANGE OF SECURITIES

Description	Date acquired	Amount realized	Cost	Loss
Coilines Power & Light Deb. 5s	1936	\$53,002 50	\$74,502 50	\$21,500 00
Amer. Bakeries Corp. "A"	1927	54,425 00	57,625 00	3,200 00
Amer. Bakeries Corp. "B"	1929	8,250 00	13,250 00	4,990 00
Anaconda Copper Mining Co.	1937	16,000 00	33,150 00	17,150 00
Bridgport Machine Co.	1937	1,000 00	4,780 00	3,780 00

1,000 shx	General Motors	1936	32,250 00	42,368 75	10,118 75
300 shx	Greyhound Corp. Pfd.	1937	2,337 50	2,475 00	137 50
1,300 shx	Hathaway Bakeries Corp.	1928-29	3,900 00	59,025 00	55,125 00
1,000 shx	Humble Oil & Refining Co.	1935-37	64,450 00	71,670 00	7,220 00
1,500 shx	Interstate Bakeries Corp.	1937	1,525 00	15,227 10	13,702 16
700 shx	Interstate Bakeries Corp. Pfd.	1937	15,750 00	41,491 84	25,741 84
500 shx	Kennecott Copper Corp.	1929	19,125 00	44,503 51	25,378 51
300 shx	Langendorf United Bakeries "A"	1938	5,600 00	11,329 61	5,729 61
56 shx	Langendorf United Bakeries Pfd.	1938	2,114 00	4,270 39	2,156 39
400 shx	Langendorf United Bakeries "B"	1938	2,200 00	15,200 00	13,000 00
1,700 shx	Rhode Island Public Service Pfd.	1929	46,537 50	51,170 00	4,632 50
1,000 shx	U. S. Steel Corp.	1938	45,750 00	75,165 00	29,415 00
500 shx	do	1936	28,625 00	37,582 50	8,957 50
2,000 shx	F. W. Woolworth Co.	1936	75,437 50	110,170 50	34,733 00
			479,355 46	761,984 66	282,629 20
	Allowable Loss as limited (Item 23 of Return)				41,761 44

## Schedule "E"

BRITISH ASSETS TRUST, LTD.  
26 Journal Square, Jersey City, New Jersey

## 1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

## GAINS FROM SALES AND EXCHANGES OF SECURITIES

Pair of bonds  
or number  
of shares

Security	Year acquired	Amount realized	Cost	Gain
Air Reduction Co., Inc.	1931	\$74,850.00	\$19,125.00	\$25,725.00
Alabama Power Company	1938, 1939	43,562.50	37,400.00	5,862.50
American Chicle Co.	1931	338,550.00	136,450.00	202,100.00
American Locomotive Company	1934	35,325.00	34,237.50	1,087.50
American Telephone & Telegraph Co.	1933	158,800.00	128,750.00	31,050.00
Anchor Hocking Glass Corp.	1931	109,112.50	91,989.90	17,122.60
Bethlehem Steel Corporation (Del.)	1935 and 1939	17,500.00	14,350.61	3,149.39
Bethlehem Steel Corporation (Del.)	1931	174,287.50	148,894.39	25,393.11
Bar Ami Company	1937	114,130.00	86,000.00	28,130.00
Celanese Corp. of America	1934	54,050.00	48,667.50	5,382.50
Chesapeake Corp.	1930, 1931	238,312.50	235,850.00	2,462.50
Continental Can Company, Inc.	1931, 1934, 1936	65,712.50	61,025.00	4,687.50
Firestone Tire & Rubber Co.	1935	56,340.00	47,370.00	2,930.00
Fisk Rubber Corp.	1934	43,690.63	39,840.10	3,250.53
Food Machinery Corp.	1935	46,550.00	38,650.50	7,899.50
General Mills, Inc.	1928, 1929, 1932	41,425.00	30,000.08	11,424.92
Georgia Power Company	1938	92,462.50	82,775.00	9,687.50
Goodyear Tire & Rubber Co.	1930	11,333.22	8,600.07	2,733.15
Goodyear Tire & Rubber Co.	1930	93,912.50	91,582.43	2,330.07
Great Western Sugar Company	1930	136,000.00	117,575.00	18,425.00
Greenwood Corporation	1936	97,885.50	74,395.00	23,492.50
Gulf States Utilities	1930	101,750.00	100,000.00	1,750.00

500 shs.	Jersey Central Power & Light Co.	1935	14,675 00	36,667 50	8,007 50
250 shs.	Kentucky Utilities Company	1938	23,337 50	20,118 50	3,219 00
2,000 shs.	Liggett & Myers Tobacco Co.	1930-1931	198,200 00	174,787 50	23,412 50
500 shs.	Louisiana Power & Light Co.	1935	48,250 00	40,520 00	7,730 00
500 shs.	Northern Indiana Public Service Co.	1925	49,250 00	46,875 00	2,375 00
377 400 War	Purchase Eastern Pipe Line Co.	1939	43 16		133 16
1,000 shs.	Public Service Co. of Colorado	1932	87,000 00	55,900 00	31,100 00
250 shs.	Public Service Co. of Oklahoma, Inc.	1931	25,250 00	24,875 00	375 00
1,000 shs.	Southern California Edison Co.	1925-1926	29,680 00	25,257 58	4,422 42
1,000 shs.	Tennessee Electric Power Co.	1938	95,000 00	68,937 50	26,062 50
1,500 shs.	United Shoe Machinery Corp.	1931	111,059 37	84,840 05	26,219 32

572,012 17

LOSSES FROM SALES AND EXCHANGES OF SECURITIES

\$100,000	United Cigar-Whelan Stores Corp.	1938	\$67,750 00	\$76,250 00	\$8,500 00
200 shs.	Allegheny Corporation	1929	3,637 00	20,104 80	16,467 80
500 shs.	Allied Stores Corporation	1929	4,687 50	5,225 00	537 50
205 shs.	Allied Stores Corporation	1929 and 1937	13,120 00	21,019 69	7,899 69
1,500 shs.	American Can Co., Inc.	1931	163,500 00	166,500 00	2,700 00
4,000 shs.	American Home Products Corp.	1931	193,750 00	197,630 10	3,280 10
1,500 shs.	Anaconda Copper Mining Co.	1937	49,312 50	83,062 50	33,750 00
1,000 shs.	Borden Co., Inc.	1931	20,775 00	39,275 00	18,500 00
240 shs.	California Packing Corporation	1937 and 1938	11,065 00	12,030 00	965 00
676 shs.	Celanese Corp. of America	1928 and 1936	69,748 25	73,543 16	3,794 91
1,000 shs.	Central Power & Light Co., Inc.	1931	90,375 00	96,000 00	5,625 00
128 shs.	Chesapeake & Ohio Railway Co.	1937	10,124 00	11,151 00	1,027 00
1,000 shs.	Columbia Gas & Electric Corp.	1931 and 1936	79,850 00	100,698 50	20,848 50
63,500 100 shs.	Consolidated Oil Corporation	1937 and 1939	4,789 63	9,758 79	4,969 16
1,000 shs.	Curtis Publishing Co.	1934	44,750 00	65,375 00	20,625 00
1,000 shs.	Gannett Company	1930	83,250 00	96,400 00	13,150 00
3,000 shs.	General Foods Corporation	1929-1931	124,050 00	153,500 00	29,450 00
250 shs.	Hathaway Bakeries, Inc.	1928 and 1929	7,062 50	28,150 00	21,087 50
200 shs.	Hershey Chocolate Corp.	1931	11,000 00	16,240 00	4,640 00
563 shs.	Insurance Co. of North America	1930	36,693 63	44,971 50	8,277 87
500 shs.	Interchemical Corporation	1937	51,656 25	53,020 00	1,363 75

[fol. 73]

Par of Bonds  
or number  
of shares

Security	Year acquired	Amount realized	Cost	Loss
International Paper & Power Co.	1937	21,400 00	22,225 00	825 00
Laggett & Myers Tobacco Co.	1936	48,500 00	53,005 00	4,505 00
Liquid Carbonic Corp.	1928 1929 1937	62,912 50	176,370 00	113,457 50
Loose Wiles Biscuit Co.	1931	51,925 00	153,612 50	101,617 50
National Biscuit Co.	1928 and 1931	23,112 50	75,375 00	52,262 50
National Dairy Products	1932	44,287 50	71,480 00	26,892 50
National Radiator Corp.	1927	98,250 00	125,912 50	27,662 50
Norfolk & Western Railway Co.	1930	141,700 00	163,140 00	21,440 00
North American Company	1935 and 1936	9,758 79	15,050 00	5,291 21
Pierce Petroleum Corp.	1924	58,412 50	194,375 00	135,962 50
Purity Bakeries Corp. Inc.	1930 and 1931	14,250 00	29,039 45	14,789 45
Radio Corporation of America	1931 and 1936	71,750 00	73,535 55	1,785 55
Radio Corporation of America	1936	23,438 33	36,391 05	12,952 72
Remington Rand, Inc.	1931 1936 1937	21,413 75	105,686 50	84,242 75
Snider Packing Corp.	1925 1926	5,116 57	5,110 81	9,644 24
Standard Oil Co. of N. J.	1938 1939	58,600 00	63,670 00	5,070 00
United States Steel Corp.	1936	16,800 00	51,541 50	37,711 50
Western Union Telegraph Co.	1936	78,500 00	78,950 00	450 00
Wm. Wrigley, Jr. Co.	1931			

Allowable Losses Limited

921,694 23  
574,013 17

Net Loss

347,679 03



Schedule E

SECOND BRITISH ASSETS TRUST, LTD.  
26 Journal Square, Jersey City, N. J.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR 1938

GAINS FROM SALES AND EXCHANGES OF SECURITIES

Description	Date acquired	Amount realized	Cost	Gain
Mead Corp.—1st Mortgage "A" 6's	1930	\$8,160.00	\$7,644.60	\$515.40
American Smelting & Refining Co.	1926	104,225.00	97,618.85	6,606.15
American Telephone & Telegraph Co.	1933	66,500.00	66,359.38	140.62
Chicago Dist. Elec. Generating Co.—Pfd.	1931	107,500.00	96,783.33	10,716.67
Union Carbide & Carbon Corp.	1931	71,400.00	64,721.86	6,678.14
Commonwealth Edison Co.		670.14		670.14
Commonwealth Edison Co.		135.36		315.36
Commonwealth Edison Co.		657.00		957.00
<b>Gain (from 11 (a) of return)</b>		<b>359,427.50</b>	<b>333,128.02</b>	<b>26,299.48</b>

LOSS FROM SALES AND EXCHANGES OF SECURITIES

Description	Date	Loss
American Cyanamid "B"	1936	\$25,537.50
Caterpillar Tractor Co.	1931	75,837.50
Caterpillar Tractor Co.—Pfd.	1937	6,000.00
General Steel Castings Corp.—Pfd.	1936	13,008.75
Rhode Island Public Services—Pfd.	1930	30,000.00
Western Newspaper Union, Inc.—Pfd.	1938	312.00
<b>Loss</b>		<b>150,695.75</b>
<b>Available Loss as limited</b>		<b>26,299.48</b>

## Schedule "E"

## SECOND BRITISH ASSETS TRUST LTD.

26 Journal Square, Jersey City, New Jersey.

## 1939 U. S. CORPORATION INCOME AND EXCESS PROFITS TAX RETURN

## GAINS FROM SALES AND EXCHANGES OF SECURITIES

Par of bonds or number of shares	Security	Year acquired	Amount realized	Cost	Gain-
\$4,000	Mead Corporation	1930	\$1,080 00	\$3,822 30	\$2,770 70
\$50,000	New Orleans Public Service Inc.	1938	17,500 00	41,250 00	6,250 00
\$25,000	Southern Natural Gas Co.	1930	23,937 50	23,634 77	302 73
500 shs.	American Home Products Corp.	1932	24,000 00	23,426 42	573 58
300 shs.	American Telephone & Telegraph Co.	1932	18,950 00	39,845 62	9,134 38
1,000 shs.	Brewster Aeronautical Co.	1937	11,362 58	5,500 00	5,862 58
300 shs.	Celacese Corp. of America	1935	31,514 25	29,460 00	2,051 25
5,000 rts.	Commonwealth Edison Co.	1939	750 00		750 00
1,000 shs.	Consolidated Gas Electric Light & Power Co. of Baltimore	1933	77,250 00	55,250 00	22,000 00
4,500 shs.	Differential Wheel Corp.	1939	52,962 50	43,541 60	9,420 90
1,250 shs.	Eastman Kodak Co.	1931	214,150 00	205,750 00	8,400 00
1,000 shs.	General Foods Corp.	1932	39,712 50	36,775 00	2,937 50
480 shs.	Great Western Sugar Co.	1925	65,280 00	55,060 12	10,210 88
1,050 shs.	Inland Steel Co.	1935 and 1937	94,393 75	66,575 00	24,818 75
1,000 shs.	McCormick Stores Corp.	1931	99,125 00	90,436 80	8,688 20
1,000 shs.	New Orleans Public Service Inc.	1931	116,000 00	106,525 37	14,474 63
1,000 shs.	Ohio Public Service Co.	1931	109,275 00	96,583 50	3,691 50
250 shs.	Public Service Co. of Oklahoma Inc.	1930	27,062 50	23,750 00	1,312 50
520 30 400 shs.	Remington Rand, Inc.	1935 and 1937	5,850 80	4,466 83	1,383 97
750 shs.	Southwestern Gas & Electric Co., Inc. (Del.)	1931	78,750 00	73,125 00	5,625 00

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Par<sup>a</sup> of bonds  
or number  
of shares

## LOSSES FROM SALES AND EXCHANGES OF SECURITIES

Security	Year acquired	Amount realized	Cost	Loss
American Bakeries Corp.	1928	\$9,100.00	\$10,400.00	\$1,300.00
American Tobacco Co., Inc.	1930	113,625.00	156,500.00	42,875.00
Borden Company	1926-1931	107,531.25	287,738.64	180,207.39
Boston Edison Co.	1925 and 1927	87,535.00	124,988.54	37,453.54
Hunter Steel Co.	1936	24,625.00	35,018.92	10,393.92
Interstate Bakeries Corp.	1937	37,225.00	78,563.10	41,338.10
Pittsburgh Coke & Iron Co.	1939	24.00	24.62	.62
Postal Telegraph & Cable Corp.	1929		102,500.00	102,500.00
Public Service Co. of Oklahoma Inc.	1930	47,297.80	48,750.00	1,452.50
Remington Rand, Inc.	1935 and 1938	74,029.30	78,401.32	4,372.02
Standard Oil Co. of New Jersey	1936	6.83	9.13	2.30
United Fruit Co.	1927-1929	44,703.12	57,475.00	12,771.88
U. S. Smelting, Refining & Mining Co.	1935	34,000.00	59,093.82	28,093.82
U. S. Steel Corp.	1936	47,200.00	50,353.60	3,153.60
West Texas Utilities Co.	1930-1931	90,000.00	95,250.00	5,250.00
F. W. Woolworth Co.	1931	26,987.50	45,306.63	18,319.13
				489,483.82
				180,905.02
				308,578.80

Allowable Loss as Limited

Net Loss

Tennessee Electric Power Co.  
Union Premier Food Stores Corp.  
U. S. Smelting, Refining & Mining Co.  
U. S. Steel Corp.

1938 47,500.00 33,063.75 14,836.25  
1938 32,112.50 27,000.00 5,112.50  
1931 65,300.00 44,747.70 20,552.30  
1936 37,250.00 33,992.08 3,257.92  
178,905.02

[fol. 133] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT

B. T. A. 108441. C. C. A. No. 8337

GUY T. HELVERING, Commissioner of Internal Revenue,  
Petitioner on Review,

v.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,  
Respondent on Review.

B. T. A. 108442 C. C. A. No. 8338

GUY T. HELVERING, Commissioner of Internal Revenue,  
Petitioner on Review,

v.

BRITISH ASSETS TRUST, LIMITED, Respondent on Review.

B. T. A. 108440 C. C. A. No. 8339

GUY T. HELVERING, Commissioner of Internal Revenue,  
Petitioner on Review,

v.

SECOND BRITISH ASSETS TRUST, LIMITED, Respondent on  
Review.

Before JONES and GOODRICH, Judges.

Order.

Now on consideration of the joint motion filed herein by counsel for the respective parties to the above-entitled proceedings, it is

Ordered, that the Clerk of The Tax Court of the United States shall certify and transmit to this Court a single consolidated transcript of record on review in the above-entitled proceedings; and that these proceedings be and they are hereby consolidated for briefing, hearing, argument and decision.

It is further ordered that the Clerk of this Court transmit to the Clerk of The Tax Court of the United States a certified copy of this order to be by him incorporated in the

[fol. 134] record on review as certified and transmitted by him to this Court.

Done at Philadelphia, Pennsylvania, this 28th day of May, A. D., 1943.

By the Court, Jones, Judge, United States Circuit Court of Appeals for the Third Circuit.

Endorsements: Order to Consolidate Cases Received & Filed May 28, 1943. Wm. P. Rowland, Clerk.

[fol. 135] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 8337

October Term, 1943.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

No. 8338

October Term 1943.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

BRITISH ASSETS TRUST, LIMITED

No. 8339

October Term 1943.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

SECOND BRITISH ASSETS TRUST, LIMITED

And afterwards, to wit, the 21st day of October, 1943, came the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Charles Alvin Jones, Honor-

able Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 6th day of April, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 136] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8337

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, Limited

No. 8338

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

BRITISH ASSETS TRUST, Limited

No. 8339

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

SECOND BRITISH ASSETS TRUST, Limited

On Petitions to Review the Decisions of the United States  
Board of Tax Appeals

Before Jones, Goodrich and McLaughlin, Circuit Judges

OPINION OF THE COURT—Filed April 6, 1944

[fol. 137] By McLAUGHLIN, Circuit Judge:

These are companion cases and were argued together. The respondent companies are British corporations. The question is: whether they were engaged in trade or business or had an office or place of business within the United States



in the taxable years 1938 and 1939 so as to qualify within the meaning of Section 231 (b) of the Revenue Act of 1938 and of the Internal Revenue Code, as resident foreign corporations. The section reads:

"(b) Resident Corporation.—A foreign corporation engaged in trade or business within the United States or ~~having~~ an office or place of business therein shall be taxable as provided in section 14 (c) (1)."

Treasury Regulations 101, Article 231—1, with respect to the above section, is as follows:

"As used in section 231, section 119, section 143, section 144, and section 211, the phrase 'engaged in trade or business within the United States' includes the performance of personal services within the United States at any time within the taxable year. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian."

"Whether a foreign corporation has an 'office' or place of business within the United States depends upon the facts in a particular case. The term 'office or place of business,' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected."

The corresponding Revenue Act section and Treasury Regulations for 1939 are substantially the same.

The problem here presented is one of law, namely, ~~whether, on the facts, these companies are entitled to be~~ classified as resident foreign corporations under the Internal Revenue Code. *Sep. Dobson vs. Commissioner*, 320 U. S. 486.

[fol. 138] The three corporations are of the same type and admittedly, investment trusts. The Board found each of them "is engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investment." The home offices of the companies are in Edinburgh, Scotland. Up to 1936, they had made no pretense of either doing business in, or having an office in, this country. All three of them had then and have now,

heavy holdings in United States securities. Prior to 1936, Scottish had made profits in the sales of such securities here. The question of income taxes arose and that company engaged the accounting firm of Barrow, Wade, Guthrie & Company of New York City, to make an audit. Following the audit, Scottish paid taxes for the years 1927 to 1934 inclusive, in excess of a million dollars, plus interest of \$220,000. Thereafter there were various discussions among the three companies as to the establishment of a United States office. On December 2, 1936 they appointed Walter Cooper, C. P. A., of New York, a partner in the above named accounting firm, as assistant secretary of all three companies. Cooper, acting for the companies, immediately obtained two rooms in the New York building where his accounting firm had offices, and on the next floor below. Each taxpayer had a separate lease for part of the two rooms. There was a telephone there which went through the accountants' switchboard. Cooper continued his partnership with the accounting firm. It is conceded that every partner of that concern who earned outside income was required by the partnership to turn over such income to the firm. Cooper left Barrow, Wade, Guthrie & Company on October 31, 1940. Shortly thereafter, he resigned as assistant secretary of the taxpayers. Employees of the accountants were active in the installation of a bookkeeping system, and making current records, in December 1936. From February 1938 through 1939 Henry A. Jeffers, an employee of Barrow, Wade, Guthrie and Company, supervised the activities of the office.

[fol. 129] The office eventually was moved to New Jersey. There it consisted of one large room with a corner partitioned off as a private office. There were two telephones, one directly to the accounting firm and one outside line. The Tax Board found that the taxpayers established this United States office, in part at least, "to gain certain tax advantages." Eventually that office collected and deposited dividends on stocks owned by the companies in the United States, maintained full bookkeeping records re transactions in the United States, transmitted to the home offices in Scotland corporate data and information regarding developments in this country, including statistics from the Federal Reserve Bank and the New York Times, prepared income tax returns and paid local office expenses.

Prior to the opening of the office, the actual purchases and sales of the taxpayers' United States securities had been made by brokers and the custodian banks. The securities themselves had always been in the possession of J. P. Morgan & Co. and the National City Bank, for the taxpayers. These identical conditions continued after the opening of the office. The only part the office had to do with purchases and sales was the recording of such transactions after notification that they had been accomplished. Such transactions by the brokers and the banks do not constitute engaging "in trade or business within the United States" being specifically excluded by Section 211 (b) of the Revenue Act of 1938 which reads:

"Such phrase (engaged in trade or business within the United States) does not include the effecting of transactions in the United States in stocks, securities or commodities through a resident broker, commission agent or custodian."

The record clearly shows that the only real business of the corporations, namely, the investment business, consisting of the purchase and sale of securities with a view of disposing of unsatisfactory shares and reinvesting in others, was carried on in Edinburgh through the three [fol. 140] boards of directors. They did everything of any importance in connection with these concerns, and it was as a result of their efforts that the income of the companies was produced. The so-called United States office functioned solely on routine matters. Most of these services had formerly been performed for the taxpayers by the custodian banks. The detail was extensive, of necessity, for the companies had millions invested in this country. That, however, gives no sound basis for finding that the United States office was the place for the regular transaction of the investment business of the corporations. The policy, management, buying and selling, were dictated from abroad. The actual buying and selling and custody of the securities were ~~now~~ always, handled by the brokers and custodian banks. With no real dispute as to the facts, the problem here resolves itself as to just what is meant by the language of Treasury Regulation 231 (1) defining such office or place of business as one implying "a place for the regular transaction of business and does not include a place where casual or incidental transactions might be or are effected." The

Regulations, under almost identical facts, was passed upon in *Linen Thread Co. v. Commissioner*, 128 F. 2d 166, (C. C. A. 2), certiorari denied, 317 U. S. 673. In that case the agent of the foreign corporation received the dividends from the company's investments in the United States together with interest due from an American subsidiary; deposited the money so received in a New York bank; paid the rent and taxes; and remitted the balance to the foreign corporation at Glasgow. The agent also filed federal and state tax returns and looked after petitioner's investments and any changes in the general business or in products or material which would affect the company, which was a manufacturing concern. The agent had a room in an office building with the lease naming the company as tenant. There were never any official meetings of directors or officers of the concern at that office in New York City. The court held on page 169:

[fol. 141] "The findings show that the petitioner had neither an office nor a place of business in the United States which would come within the statutory provisions as explained by the regulations.

"We cannot, therefore, give effect to the regulations and at the same time subscribe to the petitioner's argument that there is such a statutory contrast between 'office' and 'place of business' as used in the phrase 'office or place of business' in Section 231 (b) of the 1938 Act that the maintenance of an office which was not used or kept for the transaction of the petitioner's ordinary business would entitle this foreign corporation to be taxed as a resident.

To the same effect, *Ak Liebman et Separator vs. Commissioner*, 45 B. T. A. 243, affirmed per curiam, 128 F. 2d, 739, (C. C. A. 2), certiorari denied, 317 U. S. 661.

In *B. W. Jones Trust vs. Commissioner*, 132 F. 2d 914, (C. C. A. 4), the petitioners were a group of British trusts with approximately 90% of the funds being in American securities. There were four trustees, one of whom was a citizen of the United States. The trusts maintained an office in New York City in the name of the four trustees; all American securities were kept in a safety deposit box in a New York bank in the name of the four trustees. The American trustee and one of the three British trustees had control of the trust property and the British

trustee made semi-annual trips to the United States at which time he and his American colleague would go over the securities, decide which would be sold, which held, etc. The sales and purchases of the securities were in the hands of the American trustee. The court found that the trust maintained an office "for handling *all* (italics ours) business connected with the trust" and, therefore, that the trusts were not in a position to deny that they maintained an office within the United States.

Here we have an office set up by foreign corporations, in part at least, for the purpose of obtaining a favorable tax result. If the office were bona fide in the sense that it functioned truly on the one business of the taxpayers, this [fol. 142] element would be of no consequence. Where, under the uncontradicted facts, the business of that office had only to do with the unimportant collateral detail, voluminous though such might be, we do not think that the taxpayers, directly running their own business from abroad, through brokers and custodian banks, are justified in their present contention. It seems to us that both the Linen Thread and the Jones Trust decisions strongly support this view.

The decisions of the Board of Tax Appeals are reversed.

A true Copy. Teste:

\_\_\_\_\_, Clerk of the United States Circuit Court  
of Appeals for the Third Circuit.

[fol. 143] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8335

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, Respondent

Present: Jones, Goodrich and McLaughlin, Circuit Judges.

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the

said Board of Tax Appeals in this cause be, and the same is hereby reversed.

By the Court, Gerald McLaughlin, Circuit Judge.

April 6, 1944.

Endorsements:

Order Reversing Decision of the Board of Tax Appeals  
Received & Filed Apr. 6, 1944. Wm. P. Rowland, Clerk.

[fol. 144] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8338

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

BRITISH ASSETS TRUST, LIMITED, Respondent

Present: Jones, Goodrich and McLaughlin, Circuit Judges.

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby reversed.

By the Court, Gerald McLaughlin, Circuit Judge.

April 6, 1944.

Endorsements:

Order Reversing Decision of the Board of Tax Appeals  
Received & Filed Apr. 6, 1944. Wm. P. Rowland, Clerk.



[fol. 145] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8339

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, Respondent

Present: Jones, Goodrich and McLaughlin, Circuit Judges.

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby reversed.

By the Court, Gerald McLaughlin, Circuit Judge.

April 6, 1944.

Endorsements:

Order Reversing Decision of the Board of Tax Appeals  
Received & Filed Apr. 6, 1944 Wm. P. Rowland, Clerk.

[fol. 146] UNITED STATES OF AMERICA,  
Eastern District of Pennsylvania,  
Third Judicial Circuit, Set.

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendices to Briefs of Petitioner and Respondents, as constituting the portions of the record before this court at argument; and proceedings in this court in the cases of Commissioner of Internal Revenue, Petitioner, vs. Scottish American Investment Company, Limited, No. 8337; Commissioner of Internal Revenue, Petitioner, vs. British Assets Trust, Limited, No. 8338; and Commissioner of Internal Revenue, Petitioner, vs. Second British Assets Trust, Limited, No.

8339, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 18th day of April in the year of our Lord one thousand nine hundred and forty-four and of the Independence of the United States the one hundred and sixty-eighth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

(1738)

[fol. 144] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1944

No. 220

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 54.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 145] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1944

No. 221

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 54.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 146] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1944

No. 222

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket and assigned for argument immediately following No. 54.

— 220 221 222 —

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 147], SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

STIPULATION AS TO RECORD—Filed October 21, 1944

It is stipulated and agreed by and between the parties to the above entitled cases, through their counsel, that the [fol. 148] transcript of the record in the above entitled cases may be printed as a part of or as a supplement to the transcript of the record in Commissioner of Internal Revenue vs. Scottish American Investment Company, Limited; Commissioner of Internal Revenue vs. British Assets Trust, Limited; and Commissioner of Internal Revenue vs. Second British Assets Trust, Limited, Docket Nos. 52, 53 and 54, October Term, 1944, and shall include only the following documents and proceedings:

(a) The following documents and proceedings appearing in record filed in this court with petitions for writs of certiorari:

- (1) Exhibit I (Tr. 67-68).
- (2) Exhibit J (Tr. 69-70).
- (3) Exhibit M (Tr. 71).
- (4) Exhibit N (Tr. 72-73).
- (5) Exhibit Q (Tr. 74).
- (6) Exhibit R (Tr. 75-76).
- (7) Proceedings in Circuit Court of Appeals for Third Circuit (Tr. 133-143).

(b) Orders of this Court entered October 9, 1944, allowing writs of certiorari.

(c) This stipulation.

Dated October 16, 1944.

Marian N. Fisher, Counsel for Petitioners.

Oct. 19 44.

Charles Fahy, Solicitor General, Counsel for Respondent.